

UNITED STATES DISTRICT COURT  
SECOND CIRCUIT – SOUTHERN DISTRICT OF NEW YORK

NORBEN IMPORT CORPORATION,

Plaintiff,

-against-

PAUL'S DISCOUNT CENTER, INC. and  
PAUL VUXTA, JR.

Defendant.

Case #:

**COMPLAINT**

**JUDGE KARAS**

FILED  
U.S. DISTRICT COURT  
NOV 26 P 3:11  
S.D. OF N.Y. W.P.

Norben Import Corporation, by and through its attorney Charles J. Diven Jr.  
complains of the Defendant as follows:

**JURISDICTION AND VENUE**

1. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because there is a diversity of citizenship between the parties and the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000.00).
2. Venue is appropriate here pursuant to 28 U.S.C. § 1391(a) (3) because the individual Defendant guaranteed transactions which caused Plaintiff to ship goods from the Sate of New York.
3. That at all times hereinafter mentioned, and upon information and belief, Paul's Discount Center Inc. (hereinafter referred to as "Pauls") was and had been a corporation duly organized under the laws of the State of Virginia, maintaining a place of business, at 2330 – A W. Mercury Blvd., Hampton Virginia 23666 at the time of the events complained of herein.
4. That at all times hereinafter mentioned, the Plaintiff, Norben Import Corporation (hereinafter referred to as "Norben") was and had been a corporation duly organized under the laws of the State of New York, the Plaintiff maintaining an office at 99 South Newman Street, Hackensack, New Jersey with warehousing facilities in the State of New York, county of Rockland.

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DATE FILED:

5. That at all relevant times hereinafter mentioned, and upon information and belief, the Defendant, Paul Vuxta Jr., is an individual residing in the State of Virginia.
6. That at all relevant times hereinafter mentioned, and upon information and belief, the Defendant, Paul Vuxta Jr., was and is an officer of Pauls.
7. Pauls held itself out to the general public to be principally in the business of retailing floral and decorative goods.
8. The Defendant held himself out to be a principle, director and officer of Pauls.
9. On or about December 1, 2003 Plaintiff first sold and Pauls first purchased certain goods of Plaintiff pursuant to terms fixed in writing.
10. The amount charged for such goods were fixed by invoice and Pauls confirmed acceptance of such amount by accepting delivery in accordance with the terms of the respective invoice and signing for receipt of same. Hereinafter "written agreement."
11. That after submitting an application for credit which included references, Pauls requested and Plaintiff consented to extend credit to Pauls for the purpose of purchasing goods, said agreement being articulated in a written agreements dated respectively May 25, 2004 and September 22, 2006, same being annexed as Exhibit 1 and hereinafter referred to collectively as the credit agreement.
12. Norben refused to extend further credit to Pauls until the unpaid balance was paid.
13. The Defendant explained to Norben that if additional goods were extended to Pauls, Pauls would be able to repay the debt during its due course of business.
14. That Paul Vexta Jr., in order to induce Norben to further extend additional credit to Paul's and in order to keep Norben from seeking collection of the accumulated debt owed to it by Paul's agreed to personally guarantee Paul's past and future debts by written agreement annexed hereto as Exhibit 1.

15. That Paul's continued to purchase goods in accord with terms similar to those described in paragraphs 9 and 10 above, except that such goods were delivered pursuant to the credit terms as described in paragraph 11.
16. Pursuant to the terms of the written agreements and the credit agreements, Pauls was to pay Plaintiff monthly all outstanding balances for goods received within 30 days of receipt of same as set forth in the plain language of the written agreement.
17. From 12-01-03 to 10-05-06 Pauls accumulated a debt to Norben in an amount of One Hundred Sixty Seven Thousand Seventy Five Dollars and 44 cents (\$167,075.44) for goods it received from Norben pursuant to the terms of the agreements described above.
18. That as of January 9, 2007, the Defendants were individually and severally responsible to Norben for the debt of One Hundred Sixty Seven Thousand Seventy Five Dollars and 44 cents (\$167,075.44).

**AND AS FOR THE FIRST CAUSE OF ACTION**

19. Plaintiff repeats and re-alleges all the allegations of the complaint hereinabove set forth in paragraphs numbered "1" to and including "18", with the same force and effect as of separately set forth and numbered herein.
20. That as of the date of this complaint Defendant by reason of the foregoing is obligated to Plaintiff in the sum of One Hundred Sixty Seven Thousand Seventy Five Dollars and 44 cents (\$167,075.44) together with interest as set forth in the written agreement and credit agreement and as calculated in Exhibit 2 annexed hereto.
21. That Pauls has not paid to Plaintiff any portion of said debt.
22. That the Defendant pursuant to a written guarantee obligated himself individually and severally to Plaintiff for Pauls' debt.

23. That as a result of the foregoing, the Defendants are individually and severally obligated to the Plaintiff in the amount of One Hundred Sixty Seven Thousand Seventy Five Dollars and 44 cents (\$167,075.44) together with interest as set forth in the written agreement and credit agreement annexed hereto as Exhibit 2.

**AND AS FOR THE SECOND CAUSE OF ACTION**

24. Plaintiff repeats and re-alleges all the allegations of the complaint hereinabove set forth in paragraphs numbered "1" to and including "18", with the same force and effect as of separately set forth and numbered herein.
25. That as a result of the above Pauls has received and is in possession of certain goods belonging to Norben for which it has neither paid nor returned, converting same to their own use.
26. That the fair market value of said goods is One Hundred Eight Thousand Six Hundred Ninety Six Dollars and forty one cents (\$108,696.41).
27. That as a result of the foregoing, the Defendants are individually and severally obligated to the Plaintiff in the amount of One Hundred Eight Thousand Six Hundred Ninety Six Dollars and forty one cents (\$108,696.41).

**AND AS FOR THE THIRD CAUSE OF ACTION**


28. Plaintiff repeats and re-alleges all the allegations of the complaint hereinabove set forth in paragraphs numbered "1" to and including "18", with the same force and effect as of separately set forth and numbered herein.
29. That the Plaintiffs reasonably relied on the written representations of the Defendants to make payments and that such representation induced Plaintiff to forward certain good to the Defendant corporation.

30. That upon information and belief the neither of the Defendants intended to make payment for the goods shipped all to the detriment of Plaintiff in order to procure the goods to itself.
31. That as a result of the foregoing, the Defendants are individually and severally obligated to the Plaintiff in the amount of One Hundred Eight Thousand Six Hundred Ninety Six Dollars and forty one cents (\$108,696.41).

**WHEREFORE**, Plaintiff, Norben Import Corporation, demands judgment against the Defendant, in the form of money damages, together with interest and costs of suit;

1. As and for the first cause of action in the sum of One Hundred Sixty Seven Thousand Seventy Five Dollars and Forty Four cents (\$167,075.44) together with interest;
2. As and for the first cause of action in the sum of One Hundred Eight Thousand Six Hundred Ninety Six Dollars and Forty One Cents (\$108,696.41);
3. As and for the first cause of action in the sum of One Hundred Eight Thousand Six Hundred Ninety Six Dollars and Forty One Cents (\$108,696.41).

Dated: Yorktown Heights, New York  
November 26, 2007



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Charles J. Diven Jr. CJD 3572  
Attorney for Plaintiff  
2649 Strang Blvd., Ste. 104  
Yorktown Heights, New York 10566  
(914) 455-2909

Ex. 1

09/21/2006

11:17

1201487087

NORBEN IMPORT

PAGE 01/01

Cust # 110517  
ATT:  
Paul Vuxta

*Larksilk*

NORBEN IMPORT CORP.

INDIVIDUAL PERSONAL GUARANTY

Date

9/2/06

I, PAUL VUXTA, JR., residing at 104 MANOR HOUSE CT  
YORKTOWN, VA, for and in consideration of your extending  
credit at my request to PAULS DISCOUNT CENTER, INC  
(Name of Company)

(hereinafter referred to as the "Company" of which I am

PRES.

(Title/Office)

hereby personally guarantee to you the payment at NORBEN IMPORT CORP.,  
in the state of New Jersey, any obligation of the Company and I hereby agree to  
bind myself to pay to you on demand any sum which may become due to you by  
the Company whenever the Company shall fail to pay the same. It is understood  
that this guarantee shall be a continuing and irrevocable guaranty and  
indemnity for such indebtedness of the Company. I do hereby waive notice of  
default, non-payment, and notice thereof and consent to any modification or  
renewal to the credit agreement hereby guaranteed. This Individual Personal  
Guaranty and any and all disputes arising between the Guarantor, the Company,  
and Norben Import Corp. shall be construed in accordance with the laws of the  
State of New Jersey pertaining to contracts made and performed entirely therein  
and I hereby consent that jurisdiction and venue of all matters relating to this  
Individual Personal Guaranty shall be vested exclusively in the Federal, State  
and local courts within the State of New Jersey.

Witness

Glenda Vuxta

Signature

Sworn to and Subscribed before me this  
Day of

D/License No.

229-94-940

County/City of

Hampton

Commonwealth/State of

Virginia

The fee

Expires

25th

Sept

2006

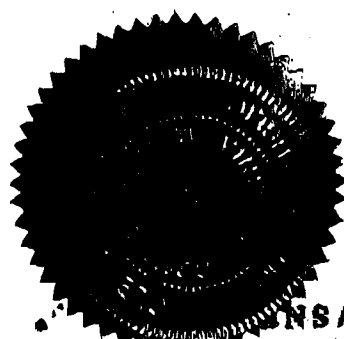
Paul Vuxta, Jr.

Glenda M Vuxta

My commission expires: 9-30-09

Glenda M Vuxta

Notary Public



99 SOUTH NEWMAN STREET

HACKENSACK, NJ 07601

FAX 201-487-0787

NORBEN IMPORT CORP.

99 S. NEWMAN STREET

HACKENSACK, N.J. 07601

TEL. 201-487-0855

FAX 201-487-0787

Please  
Complete  
and Return  
ASAP  
Thank You

*Larksilk*

NORBEN IMPORT CORP.

INDIVIDUAL PERSONAL GUARANTY

Date 5/25/04

I, Paul Vuxter, residing at 2330-A WEST MERCURY BLVD.  
HAMPTON, VA. 23666, for and in consideration of your extending  
 credit at my request to PAUL'S DISCOUNT CENTER, INC. d/b/a PAUL'S  
 (Name of Company) WHOLESALE  
 (hereinafter referred to as the "Company" of which I am PRESIDENT  
 (Title/Office)

hereby personally guarantee to you the payment at NORBEN IMPORT CORP.,  
 in the state of New Jersey, any obligation of the Company and I hereby agree to  
 bind myself to pay to you on-demand any sum which may become due to you by  
 the Company whenever the Company shall fail to pay the same. It is understood  
 that this guarantee shall be a continuing and irrevocable guaranty and  
 indemnity for such indebtedness of the Company. I do hereby waive notice of  
 default, non-payment, and notice thereof and consent to any modification or  
 renewal to the credit agreement hereby guaranteed. This Individual Personal  
 Guaranty and any and all disputes arising between the Guarantor, the Company,  
 and Norben Import Corp. shall be construed in accordance with the laws of the  
 State of New Jersey pertaining to contracts made and performed entirely therein  
 and I hereby consent that jurisdiction and venue of all matters relating to this  
 Individual Personal Guaranty shall be vested exclusively in the Federal, State  
 and local courts whining the State of New Jersey.

Witness: Paul Vuxter

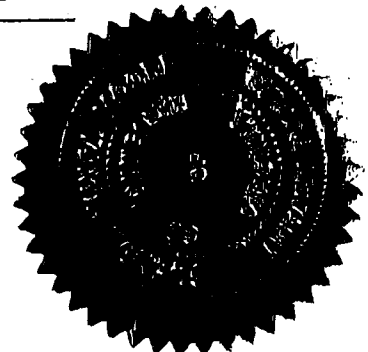
Signature

Witness: Bonnie Vuxter

Signature

Sworn to and Subscribed before me this  
 Day of

Notary Public



99 SOUTH NEWMAN STREET

HACKENSACK, NJ 07601

201.487.0855

212.695.7117

FAX 201-487-0787



Ex. 2



## PAGE

89 SOUTH NEWMAN STREET

HACKENSACK, N.J. 07601

TELEPHONES: N.J. (201) 467-0855-6-7-8

**N.Y.C. 8B5-7117**

FAX # 201-487-0787

DATE: 01 09 / 07

# STATEMENT

110517  
PAULS WAREHOUSE-VA  
2330-A W. MERCURY BLVD  
HAMPTON VA  
23666

ACCOUNTS OVER 30 DAYS OLD WILL BE  
SUBJECT TO A SERVICE CHARGE OF  
1½% PER MONTH, 18% PER ANNUM.

PHONE: 757 826-7424 FAX: 757 262-2166 LST PAY DATE: 12/20/06 AMT: 9142.10 11-AB

CURRENT	IN ARREARS	IN ARREARS	OVERALL	NET DUE
00	00	00	108,696.41	108,696.41

PLEASE REMIT  
← THIS AMOUNT



# NORBEN IMPORT CORP.

IMPORTERS OF  
FLORIST SUPPLIES - NOVELTIES - SILK FLOWERS  
66 SOUTH NEWMAN STREET HACKENBACK, NJ 07601

TELEPHONES: N.J. (201) 487-0855-6-7-8  
N.Y.C. 685-7117  
FAX # 201-487-0787

PAGE

DATE: 01/09/07

## STATEMENT

ACCOUNTS OVER 30 DAYS OLD WILL BE  
SUBJECT TO A SERVICE CHARGE OF  
1% PER MONTH, 18% PER ANNUM.

110517  
PAULS WAREHOUSE-VA  
2330-A W. MERCURY BLVD  
HAMPTON VA  
23666

PHONE: 757 826-7424 FAX: 757 262-2166 LST PAY DATE: 12/20/06 AMT: 9142.10 11-AB

DATE	INVOICE NO.	AMOUNT	PAYMENT	BALANCE	DATE	INVOICE NO.	AMOUNT	PAYMENT	BALANCE
12-01-03	509251	864.77		463.69	06/17/03		401.08		1110
12-01-03	510509	647.59			07/22/03		647.59		1110
12-01-03	510568	1,165.74			07/24/03		1,165.74		1110
08-06-03	511132	8,002.50					8,002.50		1230
12-01-03	511684	724.95			08/20/03		724.95		1110
12-01-03	512196	2,246.11			08/31/03		2,246.11		1110
12-01-03	512197	657.54			08/31/03		657.54		1110
12-01-03	513030	54.87			09/17/03		54.87		1110
12-01-03	513403	63.59			09/24/03	12/31/03 - 13963.97	63.59		1110
03-25-04	518450	872.52					872.52		990
04-02-04	518599	1,450.33					1,450.33		990
04-05-04	518678	1,479.02					1,479.02		990
06-15-04	520262	1,335.31					1,335.31		930
07-09-04	520994	69.83					69.83		900
07-20-04	521255	31,855.54					31,855.54		900
07-20-04	521256	22,480.13					22,480.13		900
07-29-04	521549	26,047.66					26,047.66		870

12/31/04  
85,590.84

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PLEASE REMIT  
THIS AMOUNT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN J. FORD, JR.

Plaintiff

-vs-

JOHN J. FORD, JR., et al.  
Defendants

MEMORANDUM AND DECISION

On March 1, 2007, the Court received a motion for summary judgment filed by the Plaintiff, John J. Ford, Jr., and a motion for summary judgment filed by the Defendants, John J. Ford, Jr., et al. The Court has considered the parties' submissions and the applicable law, and has concluded that summary judgment should be granted to the Plaintiff and denied to the Defendants.

For the reasons stated above, the Court grants summary judgment to the Plaintiff and denies summary judgment to the Defendants.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES DISTRICT COURT

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UNITED STATES DISTRICT COURT

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